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In The

Supreme Court of the United States

SANTA BARBARA BANK & TRUST, *et al.*,

Petitioners,

v.

CANIEVA HOOD and
CONGRESS OF CALIFORNIA SENIORS,

Respondents.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second District

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 15(8) of this Court, Petitioners Santa Barbara Bank & Trust; Pacific Capital Bank, N.A.; Beneficial National Bank; Household Bank, f.s.b.; HSBC Taxpayer Financial Services, Inc.; JPMorgan Chase Bank, N.A.; First Bank of Delaware; Republic First Bank; First Security Bank of Mackinaw, Illinois; Republic Bank & Trust Company; and River City Bank, Inc. ("Petitioners" or the "banks") hereby submit this Supplemental Brief in support of their Petition for Writ of Certiorari filed as of April 2, 2007 (the "Petition").

GROUNDS FOR FILING A SUPPLEMENTAL BRIEF

Supreme Court Rule 15(8) provides in pertinent part that "[a]ny party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases . . . not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter[.]"

On April 17, 2007, fifteen days after the Petition was filed, this Court rendered its decision in *Watters v. Wachovia Bank, N.A.*, No. 05-1342, ___ S.Ct. ___, 2007 WL 1119539 (U.S. Apr. 17, 2007). The Petition advised this Court of the pendency of *Watters* and argued extensively why the opinion of the California Court of Appeal below should be reversed or vacated if *Watters* were to be affirmed. Now this Court has affirmed *Watters* and explained in depth the law of federal preemption under the National Bank Act.

Additionally, in the Court of Appeal and in the Petition in this Court, Petitioners relied extensively on the

reasoning of *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d 949, 956 (9th Cir. 2005); *Wachovia Bank, N.A. v. Burke*, 414 F.3d 305, 314 (2d Cir. 2005), *petition for cert. filed*, 74 U.S.L.W. 3233 (U.S. Sept. 30, 2005) (No. 05-431); and *National City Bank v. Turnbaugh*, 463 F.3d 325, 330 (4th Cir. 2006), *petition for cert. filed*, 75 U.S.L.W. 3267 (U.S. Nov. 7, 2006) (No. 06-653). In *Watters*, this Court expressly recognized the validity of these decisions. *Watters*, slip op. at 2 & n.1, 2007 WL 1119539, at *4 & n.1.

Because this Court's ruling in *Watters* was "not available" at the time of the filing of the Petition, and because this Court's analysis in *Watters* is critical to the issues presented in the Petition, the instant Supplemental Brief is proper under Rule 15(8).

ARGUMENT

Watters confirms the proposition that in the area of national banking activity, no presumption against preemption applies. *Watters*, slip op. at 6-7, 2007 WL 1119539, at *6-7. In assuming that a presumption against preemption did apply, and in rejecting federal authorities applying no such presumption, the California Court of Appeal committed a fundamental error requiring reversal.

The statements of the dissenting appellate justice are now proven to be correct:

> In my view, the majority should stay out of the federal banking business. . . .
>
> The majority errs, in my view, when it applies a presumption *against* preemption. This is a dispute over the performance of contracts by and

> between federally regulated national banks. As the United States Supreme Court has noted, the presumption against preemption is "not triggered when the State regulates in an area where there has been a history of significant federal presence." (*United States v. Locke* (2000) 529 U.S. 89, 108, 120 S.Ct. 1135, 1147, 146 L.Ed.2d 69, 88.) National banking has been the subject of federal legislation and regulation for more than a century.

Hood v. Santa Barbara Bank & Trust, 143 Cal. App. 4th 526, 549 (2006) (Yegan, J., dissenting) (emphasis in original) [Pet. App.[1] 30a].

The trial court's statements, granting the banks judgment on the pleadings, likewise were prescient: "[A] presumption against preemption is not triggered when the state regulates in [a] field with a history of significant federal presence, and [] national banking is such a field. . . . [T]he presumption against preemption of state law is inapplicable." [Pet. App. 46a-47a (internal citations and quotations omitted).]

This Court has now reaffirmed the above principles:

> Business activities of national banks are controlled by the National Bank Act (NBA or Act), and regulations promulgated thereunder by the Office of the Comptroller of the Currency (OCC). As the agency charged by Congress with supervision of the NBA, OCC oversees the operations of national banks and their interactions with customers.

Watters, slip op. at 1, 2007 WL 1119539, at *4 (citations omitted).

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[1] "Pet. App." refers to the Petitioners' Appendix attached to the Petition for Writ of Certiorari.

> Nearly two hundred years ago, in *McCulloch v. Maryland*, 4 Wheat. 316 (1819), this Court held federal law supreme over state law with respect to national banking. . . .
>
> In the years since the NBA's enactment, we have repeatedly made clear that federal control shields national banking from unduly burdensome and duplicative state regulation.

Watters, slip op. at 5-6, 2007 WL 1119539, at *6. Congress has long been concerned with "inconsistent or intrusive state regulation." *Id.*, slip op. at 6, 2007 WL 1119539, at *6.

> We have interpreted grants of both enumerated and incidental powers to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law. . . . [W]hen state prescriptions significantly impair the exercise of authority, enumerated or incidental under the NBA, the State's regulations must give way.
>
> . . .
>
> Beyond genuine dispute, state law . . . may not curtail or hinder a national bank's efficient exercise of any [] power, incidental or enumerated under the NBA.

Id., slip op. at 6-8, 2007 WL 1119539, at *6-7 (quotations, citations and alterations in original omitted); *see also id.* at 8-9 n.6, 2007 WL 1119539, at *7 n.6 (favorably citing OCC finding that it is "costly and burdensome" to expose national banks to "multiple, often unpredictable, different state or local restrictions and requirements," and thus to do so would improperly prevent national banks "from operating in the manner authorized under Federal law").

A critical goal of the National Bank Act, this Court recognizes, is to create a system of national banks that is independent of State legislation that would regulate their core banking activities. *See Watters*, slip op. at 9, 2007 WL 1119539, at *7 (quoting *Easton v. Iowa*, 188 U.S. 220, 229, 231-32 (1903)). National banks' Congressionally-conferred powers "cannot be significantly impaired or impeded by state law." *Watters*, slip op. at 16, 2007 WL 1119539, at *10. "The NBA is thus properly read by OCC to protect from state hindrance a national bank's engagement in the 'business of banking[.]' " *Id.*

The present case involves national banks operating well within the scope of their Congressionally-conferred lending and deposit-taking powers under 12 U.S.C. § 24 (Seventh), as the RAL loans in question are repaid from federal tax refunds. *Compare Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1 (2003) (finding "complete preemption" in case relating to RAL lending) (favorably cited by this Court in *Watters*, slip op. at 6, 2007 WL 1119539, at *6), *with Watters*, dissenting op. at 2, 6 & n.9, 2007 WL 1119539, at *11, 13 & n.9 (describing mortgage lending as a historically recent expansion of national bank powers) (Stevens, J., dissenting). The trial court below ruled in favor of the banks, recognizing the substantial federal interest and applying the correct legal rule – now assuredly correct under *Watters*. The dissenting appellate justice similarly would have ruled in favor of the banks upon the understanding that no presumption against preemption should apply here.

Two justices of the Court of Appeal ruled against the banks, expressly applying the wrong legal presumption. *See Hood*, 143 Cal. App. 4th at 537, 547 [Pet. App. 11a-12a, 28a]. Moreover, the Court of Appeal expressly refused to follow federal precedents cited by the banks (and relied upon

by the trial court and the dissenting appellate justice) saying, "We are not bound by lower federal appellate court decisions." *Hood*, 143 Cal. App. 4th at 547 [Pet. App. 28a]. In *Watters*, slip op. at 2 & n.1, 2007 WL 1119539, at *4 & n.1, this Court expressly recognized the validity of those decisions, and the Court of Appeal committed plain error by rejecting them out-of-hand.

It is overwhelmingly clear that, in the present case, application of the wrong presumption made all the difference to the outcome. Now that this Court has announced the correct legal rule in *Watters*, the rule should be applied, and the decision of the Court of Appeal should be reversed.

CONCLUSION

For the reasons set forth above, and set forth in the Petition, Petitioners respectfully request that this Court grant the Petition, issue a writ of certiorari, and reverse or vacate the judgment of the California Court of Appeal.

Respectfully submitted,

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